

Message Text

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SUBJECT: CRIME PREVENTION AND CONTROL: QUESTION OF CAPITAL
PUNISHMENT, AGENDA ITEM 77

1. IN REFERENCE TO THE SWEDISH DRAFT RESOLUTION ON
CAPITAL PUNISHMENT (A/C.3/32/L.21), THE WORDING IN
OPERATIVE PARA 1: "WITH A VIEW TO THE DESIRABILITY OF
ABOLISHING THIS PUNISHMENT" PRESENTS SOME PROBLEMS FOR
THE USG.

2. AT THE FEDERAL LEVEL IN THE U.S. THE TREND HAS BEEN
OVER THE YEARS TO PROGRESSIVELY RESTRICT THE APPLICATION
OF THE DEATH PENALTY TO MURDER OF VARIOUS SERIOUS TYPES.
WE HAVE BEEN UNOFFICIALLY INFORMED BY JUSTICE DEPARTMENT
THAT THE ISSUE OF THE SCOPE OF CAPITAL PUNISHMENT FOR
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FEDERAL CRIMES IS UNDER REVIEW AT THE PRESIDENTIAL LEVEL
NOW. IT CANNOT BE EXPECTED, HOWEVER, THAT CAPITAL PUNISH-
MENT WILL BE ELIMINATED ENTIRELY SINCE THE PRESIDENT AND
THE ATTORNEY GENERAL HAVE BOTH STATED THAT IN SOME
(EXTREME) CASES THEY FAVOR CAPITAL PUNISHMENT.

3. MOREOVER, THE SUPREME COURT DECIDED IN 1976 THAT

CAPITAL PUNISHMENT IS NOT UNCONSTITUTIONAL AS "CRUEL AND UNUSUAL PUNISHMENT." ACCORDINGLY, CAPITAL PUNISHMENT MAY

LAWFULLY BE APPLIED IF OTHER CONSTITUTIONAL REQUIREMENTS ARE MET (E.G., PROCEDURAL SAFEGUARDS, NON-DISCRIMINATORY APPLICATION, DUE CONSIDERATION OF THE INDIVIDUAL CHARACTERISTICS OF THE OFFENDER). JUSTICE ADVISES INFORMALLY THAT WHILE FEDERAL LAW CURRENTLY PERMITS CAPITAL PUNISHMENT FOR SEVERAL OFFENSES (INCLUDING CERTAIN TYPES OF MURDER AND KIDNAPPING, AS WELL AS TREASON), IN ITS OPINION THE STATUTE COVERING MURDER DURING A HIGHJACKING IS THE ONLY ONE THE SUPREME COURT WOULD NOW FIND CONSTITUTIONAL AS WRITTEN. SOME 35 STATES HAVE DEATH PENALTY PROVISIONS WHICH WOULD PROBABLY PASS CONSTITUTIONAL MUSTER.

4. AT THIS POINT, THEREFORE, IT WOULD BE DIFFICULT FOR USG AFFIRMATIVELY TO SUPPORT CALL FOR ABOLITION OF DEATH PENALTY. HOWEVER, USG CAN ENDORSE OVERALL OBJECTIVE OF PROGRESSIVELY RESTRICTING THE NUMBER OF OFFENSES FOR WHICH THE DEATH PENALTY MIGHT BE IMPOSED.

5. USG IS VERY CONCERNED THAT THE HUMAN RIGHTS OF THE CONDEMNED BE FULLY PROTECTED, INCLUDING THE EFFECTIVE RIGHTS OF CONDEMNED PERSONS "TO PETITION FOR PARDON, COMMUTATION OF REPRIEVE," AS IN THE WORDING USED IN LIMITED OFFICIAL USE

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OPERATIVE PARA 2. IT IS ALL THE MORE IMPORTANT THAT EFFECTIVE PROVISION OF THESE TYPES OF GUARANTEES BE ACHIEVED NOW BECAUSE IT CANNOT BE EXPECTED THAT RESORT TO CAPITAL PUNISHMENT WILL BE TOTALLY ELIMINATED IN THE VERY NEAR FUTURE. IN VIEW OF SAFEGUARDS PROVIDED BY U.S. CONSTITUTION AND SUPREME COURT RULINGS, WE CAN (AND SHOULD) STRONGLY SUPPORT THIS EFFORT.

6. USG WOULD JOIN IN THE CALL FOR DISCUSSION OF THE VARIOUS ASPECTS OF CAPITAL PUNISHMENT BY THE 6TH UN CONGRESS ON THE PREVENTION OF CRIME AND THE TREATMENT OF OFFENDERS.

7. IN SHORT, WE COULD SUPPORT DRAFT IF OPERATIVE PARA 1 WERE DROPPED OR MODIFIED SO AS TO READ "WITH A VIEW TO ASSURING THE REGULAR REVIEW BY THE NATIONS OF THE POSSIBILITY OF REDUCING THE USE OF THIS PUNISHMENT." ALTERNATIVELY, WE COULD GO ALONG WITH A SIMPLE CHANGE FROM "ABOLISHING" TO "REDUCING TO A MINIMUM THE USE OF."

8. IF NO ACCEPTABLE MODIFICATION CAN BE ACHIEVED, DEL SHOULD ABSTAIN IN VOTE WITH EXPLANATION OF U.S. POSITION

ALONG THE LINES INDICATED ABOVE. MOREOVER, IF CONSENSUS
UNAVOIDABLE, DEL MAY JOIN WITH APPROPRIATE STATEMENT
INDICATING IN LOW KEY USG INABILITY TO SUBSCRIBE TO
ABOLITION OF DEATH PENALTY IN LIGHT OF OUR CURRENT

NATIONAL POLICIES AND STRONGLY EMPHASIZING USG CONCERN
FOR HUMAN RIGHTS ISSUES. IN ANY CASE, THE LIMITATIONS
OF THE FEDERAL GOVERNMENT'S JURISDICTION ON THIS ISSUE
IN OUR FEDERAL SYSTEM SHOULD BE CLARIFIED BY THE U.S.
DELEGATION. VANCE

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